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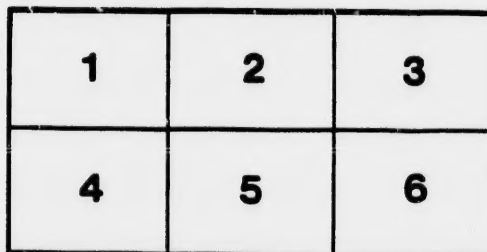
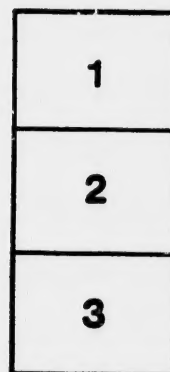
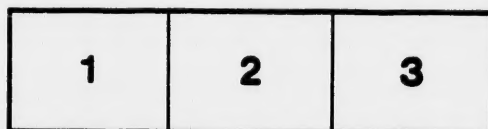
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THE *Chronicle & Gazette* of Jan. ✓

SPEECH OF
CHR. A. HAGERMAN, ESQ.

IN THE HOUSE OF ASSEMBLY,

**ON THE REPORT OF THE COMMITTEE ON THE DIFFERENCES BE-
TWEEN HIS EXCELLENCY SIR FRANCIS B. HEAD, AND
THE LATE EXECUTIVE COUNCIL.**

KINGSTON.

PRINTED AT THE OFFICE OF THE CHRONICLE & GAZETTE.

1886.

The SOLICITOR GENERAL began by observing, that when this important subject was referred to a select committee, the house and the country had a right to expect that an able, statesman-like and temperate report would have been made, containing intelligible, if not convincing arguments, and referring to authorities which would at least have the appearance of plausibility, if they were not found absolutely conclusive in favor of the views of its framers:—he regretted however to state that in these expectations the country at least, if not the house, would be completely disappointed. The dispassionate and intelligent reader of the voluminous document then lying on the table, would search in vain throughout its pages for dignity of sentiment, patriotic views, or calm, convincing argument illustrative of truth: while, as a literary production, it would be found to be beneath criticism,—and in its general style and language, so marked with an utter disregard of all delicacy of feeling, and the ordinary courtesies of life, as to render it a disgrace to any legislative body that might sanction its promulgation. The speech of the Chairman of the committee, which had been addressed to the house, was but a repetition of the leading statements contained in the report, and like the report itself, contained not one solid argument, to sustain the new and most extraordinary interpretation of our Constitution which had suddenly broken in upon the minds of some of our self-styled reformers. It would not be surprising, therefore, if, in the course of the remarks he should address to the house, he should not refer very frequently either to the report or to the speech of the Chairman, as in fact his principal duty would be, to endeavor to supply information which had been altogether overlooked or disregarded by the advocates of the new theory. It appeared to him that the point to which the committee should have turned their attention, was the origin of Executive Councils in the Colonies,—the duties originally assigned to them,—and the responsibility, if any, which attached to them as Councillors:—had this course been adopted by the Committee, they would have been greatly assisted in coming to a correct conclusion—and why they had not done so, he would not stop to enquire, but leave it to the public to conjecture motives of which they could form as good an opinion as he could. Another advantage which would have resulted from this plan of investigation,

had it been adopted, would have been, that the committee would have informed themselves of the utter impossibility of the Lieutenant Governor's divesting himself of responsibility, and that by the Laws and Constitution, he is emphatically and distinctly responsible to the King as the head of the Empire, politically; and to the people of this Province, individually, in his private capacity, for every act of his Government, and that the Executive Council are not and cannot be made responsible to the people for any acts of theirs. Without further remark he (the Sol. Gen.) would proceed to show on what grounds and upon what authorities he rested these opinions. There were not many works extant containing a history of the Constitutions and forms of Government in the Colonies, but there were a few, and some of them giving a very explicit account of the Councils appointed by the Crown,—their duties and responsibilities, especially in the Colonies in America; and in order to attract the attention of the House to the line of argument he intended to pursue, he begged hon. members would bear in mind that it would eventually appear, that the Executive Council of Upper Canada, which it was contended was created by, as well as identified with, the Constitution of the Province, (as conferred by the 31st Geo. 3,) was merely the continuation of a body that had existed in Canada from the first moment of an organized Government after the Conquest, down to the period of the passing of that Act which divided the Province of Quebec into Upper and Lower Canada,—and which was precisely similar to those existing in the old Colonies, on this Continent and the West Indies.—The first authority he should cite in support of this argument was that of a gentleman who held the office of Chief Justice of Georgia, during the time that State was a Colony of Great Britain, and subsequently held high legal appointments in the West Indies. This gentleman in his remarks on the Council says,—

“They are to give advice to the Governor or Commander-in-Chief for the time being when thereunto required; and they stand in the same relation to the Governor in a Colony, that the Privy Council does to the King in Great Britain: in some cases the Governor can act without their advice and concurrence, and there are other cases in which the Governor is required by his instructions not to act without the advice and concurrence of his

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Council"—"which (instructions) every Governor and Commander in Chief should carefully attend to."

"The Council sit as Judges in the Court of Errors or Court of Appeal."

"The Council are named in every Commission of the Peace as Justices of the Peace throughout the whole Colony:"—Stoke's Constitutions of the British Colonies, pp. 239, 240. Thus we see the origin of Councils in the Colonies, and the duties assigned to them, and how completely the duties heretofore performed by the Council in this Province correspond with those imposed on the Councils in the old Colonies now separated from Great Britain, as well as those which remain appendages of the Empire. In the old Colonies, they advised the Governor when required by the King's Instructions, they do so here; in the old Colonies they constituted a Court of Appeal, by our Constitution that duty is imposed upon them here:—and in this Province, as in the other Colonies, their names appear as Justices in every Commission of the Peace throughout the Province. The same author observes, that when a new Governor came to a Province, the names of the persons who were to constitute his Council were named in his instructions, and that no other appointment or commission was necessary; but this practice has now fallen into disuse, at least in this Province. The last set of instructions containing the names of the Council were those brought out by Sir Peregrine Maitland; but it should be borne in mind, that those very instructions are those now laid on the table by command of Sir Francis Head, that they contain the names of the Councillors then existing in Upper Canada and *prescribe their duties*. These instructions and these duties have undergone no change since that period.

Governor Simcoe, the first Governor that came to this Province, brought with him the first instructions that were designed to direct the King's representative, the Council, and other officers of the Government in their duties, and as they were in the adjoining building on record in the books of the Council, it was somewhat strange that the committee did not examine them. They would be found to be the same as those delivered to Sir Peregrine Maitland.

In some of the old Colonies the Council was possessed of Legislative power conjointly with the Governor, and sometimes formed an

intermediate legislative branch between the Governor and an Assembly elected by the people:—of course, in all matters relating to the enactment of laws, the Governor could not act independently of the Council, except in so far as respected the assenting to or refusing of bills. Upon the death, removal, or resignation of the Governor, the senior Councillor by the King's Instructions assumed the Government, as in this country, unless the Senior Councillor happened to be Superintendent of Indian Affairs, or Surveyor General of the Customs, (which officers were always extraordinary members of the Council,) in which case the Government devolved on the ordinary member of the Council next in seniority.

Such was the nature and constitution of the Executive Councils in the old Colonies in America, and although in the majority of those Governments, Legislative Assemblies existed, one branch elected by the people as in this country, yet there is no trace of any pretence that those Councils were responsible for their official acts to any other person or party than the King. Responsibility to the elective branch of the Legislature was never thought of: and the Chief Justice of Georgia, whose work he had quoted, and who had resided and held office in several of the other Colonies, distinctly states, that the *Executive Council* were guided by the King's Instructions and were therefore responsible to His Majesty only. They were appointed as in this Province by the King, and removed at his pleasure; they advised his representative, when required, in secrecy; their acts could be known to the King only, and to him only, were they accountable for them.

Let us now consider the origin and constitutional powers of the Executive Councils in these Provinces—they will be found to be precisely similar to those already described.

It would be recollected that Canada was obtained by conquest from the Crown of France in 1759, and that by the treaty of Paris in 1763, it, together with other territories in America, was finally ceded to Great Britain:—the form of Government in Canada between the year 1759 and 1763, was of course a purely military despotism, regulated by the terms of the capitulation. In the year 1763 the King issued his Proclamation, in which he declared, that the Territory in America ceded by the treaty of Paris, should be erected into four separate Governments, viz: Quebec, comprising the whole of Canada; East Florida; West

Florida; and Grenada. For the purpose of shewing clearly the views of His Majesty with respect to the form of Government intended by him to be established in those Territories, it would be proper to refer to the Proclamation itself, which contains the following passage:—

"And whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are and shall become inhabitants thereof, we have thought fit to publish and declare by this our proclamation that we have, in the letters patent under our Great Seal of Great Britain, by which the said governments are constituted, given express power and direction to our Governors of our said Colonies respectively, that so soon as the state and circumstances of the said Colonies will admit thereof, they shall, with the advice and consent of the members of our Council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those Colonies and Provinces in America which are under our immediate government; and we have also given power to the said Governors, with the consent of our said Councils and the Representatives of the people, so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said Colonies, and of the people and inhabitants thereof as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other Colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to our said Colonies, may confide in our royal protection for the enjoyment of the benefit of our laws of our realm of England: for which purpose we have given power under our Great Seal to the Governors of our said Colonies respectively, to erect and constitute, with the advice of our said Council respectively, Courts of Judicature and public justice within our said Colonies, for the hearing and determining of causes, as well criminal as civil, according to law and equity, and as near as may be agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such Courts, in all civil causes, to appeal, under the usual limitations

and restrictions, to us in our Privy Council."

Here then was the root from which sprung our present constitution. In the above extract it will be observed that in the Patent constituting the Government of Quebec, allusion is made to "a Council," and that the Governor, with the advice of such Council, might summon and call a General Assembly, "in such manner and form as is used and directed in those Colonies and Provinces in America which are under our immediate government." Now it would scarcely be contended that the Council thus created by the King, could be responsible to any other power than himself. There was not at that time, nor for years afterwards, any representative body in the Colony; and it might be further remarked, that had an assembly been convened in pursuance of the power contained in the proclamation, it (the assembly) was to be constituted as in the "*other Colonies and Provinces in America*," and it does not appear that it was to be clothed with greater powers than they possessed. No assembly however was ever called under the authority of the proclamation, and Canada continued to be governed by a military officer, assisted by a Council, until the year 1774. For eleven years an Executive Council did exist clearly and positively irresponsible to any power but the Crown, and possessed too of powers greatly transcending those of the present Council, for it appears by the 4th section of the Act 14th Geo. 3d, ch. 83, that with the Governor it had power to *enact laws* by which the inhabitants of the Colony were bound. This Act, the 14th Geo. 3d, was the first passed by the British Parliament giving a settled form of government to Canada, and in it allusion was made to the existence of a Council, possessing the powers just mentioned. That Act authorized His Majesty to appoint a certain number of persons as Legislative Councillors, who when appointed should hold their offices for life; and ordained that the laws and ordinances passed by them, and assented to by the Governor, on behalf of the King, should supersede all ordinances previously made by the Governor and Executive Council. The Executive was not however done away with; on the contrary it continued to exist to advise the Governor; and by an ordinance passed in the year 1785—by the Legislative Council and Governor, it was constituted a Court of Appeal as in the old Colonies, which ordinance is recognized and confirmed by our Constitutional

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Patent constitution of Quebec, allusion is made at the Governor, Council, might summarily, "in such and directed in America which government." Now that the Council could be responsible himself. There years afterwards, the Colony; and it had an assembly of the power, it (the assembly), "the other Council," and it does clothed with great-

No assembly under the authority had continued to be, assisted by a 4. For eleven did exist clearly of any power but of powers great- present Council, tion of the Act by the Governor y which the in- bound. This a first passed by a settled form of Council, allusion was Council, possessing That Act author- certain number councillors, who their offices for laws and ordi- nances to be by the Council, should su- ly made by the Council. The Ex- away with; on ist to advise the e passed in the Council and Go- court of Appeal ordinance is re- Constitutional

Act, 31st Geo. 3d, ch. 31, sec. 34. Before proceeding to examine the provisions of the important act last mentioned, it might as well be asked whether the Executive Council of Quebec, between the years 1774 and 1791, could be said to be responsible to any other power than the King for their official conduct? It would be manifestly absurd to say that it was responsible to the people, at a time when the people had no voice in the government.—The Governor and the Legislative Council were both appointed by the King; the Executive Council was a body created by the King which he could continue or suppress at his mere will and pleasure—there being no law or ordinance that required their existence. Being appointed, their duties were defined by the King, and lessened or extended according to his sole decree, unless where particular duties were imposed by ordinance; and when so, those duties were of a character distinct from those of advisers of the King's Representative. Where then should we seek for their responsibility to the people? It could no where be found. [Hear, hear.] If then up to the time of passing the Constitutional Act the Executive Council were alone responsible to the King, the next and most important question to be decided was, whether by that act their character was changed,—whether in fact, as is now alleged, "*The Executive Council of this Province is by the Constitution responsible to the people, and not to the Crown—and like the Cabinet in England should go out of office upon a vote of the Assembly, and that the Governor is bound by their advice, and is not responsible for his acts any more than the King is for his acts.*" Those who blindly contended for a principle so dangerous to the peace, welfare, and good government of this Province, would search in vain for support from the great Charter conferred upon its inhabitants for the protection of their liberties. That act recognizes a Council to be appointed by the King, but it creates no such body. It was manifest that when the 31st Geo. 3d was passed, the British Parliament had before it the King's Proclamation of 1763—the Royal Instructions to the Governor—the Act of 14th Geo. 3d, ch. 83—and the ordinances of the Province of Quebec, passed in virtue of the last mentioned act: each of which was specifically referred to in the Constitutional Act; and Parliament assuming that the King in the exercise of his royal prerogative would continue a Council which

had previously existed, required of it when created certain specified duties, but no where making it a Cabinet which by its advice was to govern the Province, and assume the power and responsibility of the Crown,—rendering the King's Representative a mere cipher, subject to its domination and control. A principle so preposterous as this could no where be found in the Constitution. [Hear, hear.] Nothing could be more clear than that it never was intended that the Council should have greater powers than were entrusted to it prior to the passing of the Constitutional Act; which powers were defined in the King's instructions, and in the laws and ordinances then in force in the Colony, passed in pursuance of the powers given by the 14th Geo. 3d. By an ordinance of the Province of Quebec, the Governor and Executive Council were constituted a Court of Appeals, and were continued such by the 34th section of the Constitutional Act—and by another section the Governor was required to act with the advice of his Council in erecting parsonages and endowing them: these are the only duties specifically required of the Council; all others depend on the will of the Sovereign. If, as is contended, it was meant that nothing could be constitutionally done without the advice of the Council, was it to be believed that so important a principle would have been left in doubt by the eminent statesman who framed the Constitution? It was inconsistent with common sense to suppose they would have been so blind to their duty. [Hear, hear.]

But in truth, there could be no doubt in the minds of dispassionate and intelligent men—the Constitution itself gave a plain and distinct negative to the assertion, that the Governor is at all times and upon every public occasion to consult the council. It would be admitted that no duty which a Governor has to exercise can be of greater importance than deciding on the Laws presented to him by the other branches of the Legislature for the Royal assent; and it may be fairly argued, that if upon any one point more than another he stands in need of the advice of a council, it must be in coming to a decision on questions which may involve the safety of the liberties and property of the people of the country; notwithstanding this, however, he is not to be guided by the advice of his Council, but by the Royal Instructions. This was a provision of the Constitution itself, and in the following

plain and intelligible words:

"Sec. XXX. *And be it further enacted by the authority aforesaid, That whenever any bill, which has been passed by the Legislative Council and by the House of Assembly in either of the said Provinces respectively, shall be presented, for His Majesty's assent, to the Governor or Lieutenant Governor, of such Province, or to the person administering His Majesty's Government therein, such Governor, or Lieutenant Governor, or person administering the Government, shall, and he is hereby authorised and required to declare, according to his discretion, but subject, nevertheless to the provisions contained in this act, and to such instructions as may from time to time be given in that behalf by His Majesty, his heirs or successors, that he assents to such bill in His Majesty's name, or that he withholds His Majesty's assent from such bill, or that he reserves such bill for the signification of His Majesty's pleasure thereon.*"

This section of the constitutional act was important for several reasons, but principally because, in the first place, it at once overthrows the doctrine that the Governor is on all occasions to consult his council, or act by its advice; and secondly, as showing that the King's instructions from time to time given, were recognised by Parliament, and embodied in the Constitution as binding on the Governor. [Hear, hear.] The clause just quoted required the person administering the government to assent to or reject bills "according to his discretion," not by and with the advice of his Council, but in conformity with the instructions he may "from time to time" receive from His Majesty. How absurd would it then be for a Governor, were he to apply to his Council in a doubtful case for advice, and acting upon it, assent to a bill contrary to the orders contained in his instructions, which, by the express terms of the Constitution were to be his guide. How would he excuse himself by alleging that he acted upon the advice of his Council, instead of his instructions?—Where then must the responsibility rest?—Upon himself, of course; and it would be out of his power to rid himself of it, and cast it upon another. [Hear, hear.]

The Constitution having thus emphatically recognized the Royal Instructions, as binding upon the Governor, and forming a part as it were of the Constitution itself, it would be proper again to refer to those Instructions for

the purpose of placing before the house, in a clear and connected manner, the duties required by the Sovereign of the members of his Council when he appointed them to their office: the following were the words used:

"To the end that our said Executive Council may be assisting to you in all affairs relating to our service, you are to communicate to them such and so many of these our instructions, wherein their advice is mentioned to be requisite, and likewise all such others from time to time as you shall find convenient for our service to be imparted to them."

Language could scarcely be more intelligible or free from ambiguity, than was here employed; and let it be borne in mind, that these instructions were brought to this country by Governor Simcoe, who was also the bearer of the Constitution conferred upon this Province, and which he was charged to put in operation. They were moreover delivered to him after the Constitutional Act had passed the British Parliament, and by the same statesman who had conducted that great measure to maturity. [Hear, hear.] If then the principle now contended for was correct, those statesmen were the first to attempt to violate the Constitution they had framed, and Governor Simcoe was selected and agreed to assist them in their design!—There was something so wicked and preposterous in the mere mention of such a conspiracy that the mind instantly repels it, without further investigation.

The Councillors named in the Instructions containing the paragraphs just quoted, were sworn into office in the presence of Governor Simcoe, and it would be too much for the most credulous to believe that such would have been the case if that able and excellent man believed that the duties of these councillors were unconstitutionally circumscribed by the King, from whom he had just received his commission as the first Lieutenant Governor of Upper Canada.

And here he [the Sol. General] would pause on this branch of the subject, and calmly, but earnestly entreat hon. members to consider the question as he had attempted to present it to them. An attack has been made upon the Lieutenant Governor of a most violent—one might say ferocious character,—and he is charged with an attempt to change the Constitution, or to prevent His Majesty's subjects from fully enjoying it, by refusing to surrender his power and responsibility to the Executive

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Council!—but upon a candid examination, will any one say that he could have acted differently from what he has done? Clearly not. Were he now to adopt the views contained in the report of the Committee, he must place himself in direct opposition to the commands of the Sovereign, contained in his Royal Instructions, and which every preceding Governor has been bound by. The real state of the question is this,—it is with the King that the house is coming into collision, and not with his representative. If Sir Francis Head be wrong, the error did not originate with him—the King on his throne is the party this attack must affect—it is against his royal authority that this house is now contending, and to be successful they must compel him to surrender, as unconstitutional, the powers he has exercised without dispute, ever since and long before Upper Canada became a portion of his dominions. For his own part, he [the Sol. Gen.] earnestly prayed that for the safety, peace, and tranquillity of the country, the attempt now made by the house might fail:—in its success he sincerely believed the highest interests of the Colony would be sacrificed; but he had too much confidence in the wisdom and integrity of Government to suffer himself for a moment to imagine that a scheme so certain to bring destruction on our most valued institutions could succeed—something more than blustering language, and insulting resolutions, and abusive reports, must be resorted to, to obtain so important a change in the system of our government as that contended for by the majority of the house. With the British nation, hard names, and violent conduct would avail but little; on the contrary, such proceedings would effectually counteract the result sought for, especially when they betrayed themselves, as in the present instance, in public documents emanating from a Legislative body, whose acts should be marked with dignity, forbearance, and calm reasoning. There were few men whose political sentiments he more cordially detested than those of Mr. Joseph Hume, of "baseful domination" memory; but let the Report under discussion be laid before that gentleman, and he was satisfied that it would be treated with contempt even by him, for its rudeness and its entire destitution of dignity and argument. The house might, if it pleased, destroy the prosperity of the country, and spread embarrassment through all classes of the community, by refu-

sing supplies, but what would this avail? The King upon his throne must be attacked and overcome, before his right to issue and enforce those Instructions could be invalidated. [Hear, hear, and applause.]

From what he had stated it was evident that the powers of the Executive Council were limited by the King, and that their very existence was dependent upon his pleasure. It had been stated that the Council ought to be responsible not to the Crown, but to the people, and that if such were not actually the case it ought to be so. This he would deny in the most distinct and unqualified manner, and he defied any man in Upper Canada, or in the whole world, to maintain such a position. It was not so;—it ought not to be so. [Hear.] Suppose that the Council should be compelled to retire whenever a House of Assembly, (no matter what its political character) should say it was not worthy of confidence, the right of the King to appoint the advisers of the Governor would in such case be at once destroyed. It might be said the house did not wish to dictate what particular persons should compose the Council;—but such an assertion would be mere evasion. If the house were at liberty to remove the Councillors, by declaring their want of confidence in them, they could repeat their declarations until they obtained the particular persons they desired, and this would be virtually appointing them. Where, under such a state of things, would be the King's authority? The moment the House had power to say who should compose the Executive Council, that moment the king's office and authority would be annulled, and the power and patronage of the Crown, within the Colony, would be transferred to the House of Assembly. [Hear, hear.] The hon. and learned gentleman (Dr. Morrison) might smile as he observed he did, but he knew it could not be otherwise; and no single argument could be brought to bear against this plain and obvious truth. In favor of the new theory of responsibility to the House of Assembly, it had been asked, how will you get rid of the consequences of any improper acts of the Governor, seeing that his removal will not make reparation to injured individuals, or restore the lives of any who may have been victims of his unadvised tyranny? But he (the Sol. Gen.) would ask how, so far as the consequences of improper acts are concerned, would the matter be amended by making the Council

responsible, instead of the Governor? Would that restore the dead to life? Would that make good any injury that might otherwise accrue to individuals, or to the Colony?—But that was not all. The responsibility contended for was a mere shadow—[hear, hear]—a mere illusion of the fancy. The Governor was really, and tangibly responsible for his acts, and might be punished; as he should they occasion to show in the course of his argument. But how would you punish the Council? It was impossible to do so otherwise than by dismissing them, for this obvious reason, that as they are, and must of necessity be sworn to secrecy, it would be impossible to find who among them gave bad advice, and who opposed an improper measure. Thus, the punishment, if such it could be called, must be inflicted on the innocent as well as the guilty, or all must go free. If he had not misunderstood some hon. gentlemen who were in favor of the new system, they had contended that the Council should be consulted on all occasions, but admitted that the Governor might act upon their advice, or reject it, at his pleasure. How then would they hold the Council responsible? To be sure the late Council have said, We have labored under much odium, and we wish to be allowed to tell the people that we are not guilty, when any unpopular act takes place without our advice. Suppose this were granted, would not common candor require that they should tell the people that they did not deserve the credit of a popular act, if done against their advice? Where would be the obligation of their oath, if, contrary to it, they were thus to "respond to the people." Such a system of responsibility might have peculiar charms for some hon. gentlemen, but it was really beyond his comprehension to perceive its propriety. Just look at the absurdity of the Council communicating with the public whenever their advice was not acted on, and telling the people "We are not tyrants, but the Governor is a despot." Sworn agitators! [Hear, hear.] However fond of new things reformers might be, and whatever they might declare to the contrary, they did not, they could not wish for such a state of things, if they really had the peace of the country at heart. [Hear, hear.]

It had been argued that the Executive Council is here what the Cabinet is at home. Now this was just as absurd, and betrayed the same ignorance of facts, as the declaration in the Report, that the Governor has power to DE-

CLARE WARF.—The Executive Council strictly resembled the King's Privy Council, and it might be worth while to direct attention for a moment to that body, and its powers. Some hon. gentlemen seemed to imagine that the King consults the Privy Council on all occasions; but in this they were entirely mistaken. The King could call on his Privy Council or any portion of its members for advice whenever he pleased, and they were bound to give him their assistance whenever required of them, & that too whether they agreed with the general policy of the government or not. The Privy Council, at present, was composed of a great number of gentlemen of different political views, and the King could act with or without their advice. They were altogether differently constituted from the Cabinet Ministers, which last held their offices virtually at the will of the House of Commons; but the changes of the Cabinet do not at all affect the Privy Council. The latter are bound by their oath to give their advice in any case in which it may be asked, but His Majesty is not obliged to ask it; but he may send for other persons, if he pleases, and consult them, and then act according to the best of his judgment.

During this discussion there had been various authorities quoted on the other side, and among others, that of Lord Stanley had been adduced; now he was also willing to refer to that able and honest nobleman's opinion given when he was a member of the Cabinet. He says,—

"—The Executive Council is a body acting in the nature of the Privy Council in this country—advising the Governor, but not responsible to him, and forming a Council against whose opinion as well as with it, he may act—and subject also to the control of the Treasury here as auditing and passing the accounts of the Province, so far as the jurisdiction of the Treasury extends."

So much for the opinion of Lord Stanley when a Cabinet Minister, and when it became necessary for him to inform himself of the constitutional duties and powers of the Executive Council. It will scarcely be found to favor the notion that the Executive Council were responsible to the people rather than to the Crown—and far less will it establish the opinion, that the Governor was bound by the Constitution to consult them except when he thought it proper and necessary to do so. He would next adduce that of the Hon. James Stuart, late Attorney General of Lower Cana-

da, a very that "it v Council w he never i quired the He, (the S the Execut he knew they were and the G upon it, on Majesty ha Privy Cou Governor w his advise against wh Council, m jority of the annihilate t Such was n of this Pro hon. membe was much men did no rushed into more rema Councilors, Province int agined that secrecy, they r upon all occa people the res hear.) Anot which had n alluded to th to the admin had been eul had ever bee (the Sol. Gen gentleman to a most excell last to detract When in Eng fed, and much ld monument memory of th men of Devon Exeter, bearin priate inscrip vices commen during the A Governor of person prove t government diff point which v ate? No, it

Council strictly Council, and it attracted attention for a powers. Some imagine that the Council on all occasions is entirely mistaken. Privy Council or for advice when- ever bound to give ever required of agreed with the gent or not. The is composed of a different politi- cal with or with- altogether dif- Cabinet Minis- tries virtually at Commons; but the at all affect the bound by their y case in which ty is not oblig- ed for other per- them, and then judgment.

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Lord Stanley when it became itself of the con- of the Executive und to favor the ucil were res- than to the ublish the opin- and by the Con- cept when he y to do so. He e Hon. James f Lower Cana-

da, a very eminent and able lawyer, who says, that "it would, in his opinion, be better if the Council were more frequently consulted;" but he never intimated, that the Constitution required them to be consulted on all affairs. He, (the Sol. General) knew not how often the Executive Councillors were consulted; but he knew that when they were, and then only, they were bound to give their honest advice, and the Governor had the same right to act upon it, or to decline following it, that His Majesty had with regard to the advice of his Privy Council. If this were not the case, the Governor would be the mere passive tool of his advisers, and, according to the system against which he was contending, they, the Council, must be equally the tools of the majority of the Assembly. Such a system would annihilate the kingly authority. (Hear, hear.) Such was not the Constitution of England, or of this Province; but the blind theory of the hon. member for Lennox and Addington. It was much to be lamented, that hon. gentlemen did not think, and examine, before they rushed into such absurdities. It was still more remarkable, that the late Executive Councillors, who had thrown the affairs of the Province into such confusion, should have imagined that consistency with their oath of secrecy, they might insist upon being consulted upon all occasions, and then proclaim to the people the result of their deliberations. (Hear, hear.) Another argument had been adduced, which had not a little astonished him. He alluded to the reference which had been made to the administration of Governor Simcoe, who had been eulogized as the best governor that had ever been appointed to the Province. He (the Sol. Gen.) was as ready as any other hon. gentleman to admit, that General Simcoe was a most excellent man; and he would be the last to detract from his well earned merits. When in England lately, he was highly gratified, and much affected, on observing a splendid monument which had been erected to the memory of that gallant officer, by the gentlemen of Devonshire, in the Cathedral Church of Exeter, bearing a highly honorable and appropriate inscription, and ornamented with devices commemorative of his valuable services during the American Revolution, and while Governor of Upper Canada. But could any person prove that he had administered the Government differently from his successors, in the point which was that day the subject of debate? No, it was impossible. He would re-

fer hon. gentlemen to the Council books, and ask them whether Governor Simcoe consulted his Council on all affairs? The result of such an examination would be fatal to the argument which hon. gentlemen had attempted to bring to bear upon Sir Francis Head. Look at the other public records of the Province. Governor Simcoe had assented to laws, summoned parliaments and dissolved them, issued proclamations dividing the Province into Districts, (certainly one of the most important powers ever entrusted to a Governor) and all this without any mention being made of the advice of the Council.—It was probable that he might have conversed on these subjects with his old friends and companions-in-arms, by whom he was surrounded in this country, and the Councillors appointed; but it could never be shown that the Council was to assist him on all occasions—the instructions delivered to him, as had been shown, made this necessary. The same observations would apply to the administration of General Hunter, Mr. Gore, and, indeed, every succeeding Governor. Yet, it was now declared, in order to bring odium upon Sir Francis Head, and to induce him, by intimidation, to yield up to irresponsible advisers one of the most important prerogatives entrusted to him by his Sovereign, that he is, in this particular, taking a stand never before assumed by his predecessors.—(Hear, hear.) But bold assertions, could not, in this day, be passed off on the country as facts, and hon. gentlemen would find this to be the case before this question was settled.

It had been contended, that Governor Simcoe said we had the very image and transcript of the British Constitution. He (the Sol. Gen.) would say we had more. (Hear, hear.) Even the Constitution itself, except such portions of it as we had refused to receive. Every part and parcel of the British Constitution that was necessary for the practical purposes of good government in this Province had been extended to it. The British Constitution, consisting of King, Lords, and Commons, each branch possessing its peculiar rights, powers and prerogatives, and the laws and institutions of the Empire, were not confined to Great Britain and Ireland—their influence reached throughout all the widely extended dominions of the British Empire; and shed their protecting power and blessings to the remotest portion of the Realm and possessions of our Sovereign:—and the people of Upper Canada are as much protected by that Constitution as

if they lived in an English County. Nay, more, for the British Parliament had given up a portion of its legitimate powers, and imparted them to these Colonies. Thus, the Provincial Legislature had power to make laws, without any interruption or interference on the part of Great Britain, except where such laws would militate against the general interests, or any of the great constitutional principles of the Empire. Such a check it was of course necessary to preserve, so long as we remained a Colony. Besides this, we are under the powerful protection of the British Crown, and were our rights to be infringed by any nation or power on earth, the arm of mighty England would at once be raised for our defence, and to protect us from injury or insult. (Hear, hear.) Yes, he would ask, who provides fleets and armies for our protection?—who erects forts and constructs canals at an expense of millions for our benefit?—who gives protection to our trade and exclusive privileges to our commerce?—who nurses and cherishes all our institutions until we shall be able to manage and bear the expenses of them ourselves?—it was the Parent State, and it could not be denied that all these blessings flow from the practical workings of the British Constitution, and that, so far as was compatible with our Colonial relation, we had the full benefit of our Constitution. In our local Legislature, we had the principles of King, Lords, and Commons.—We had trial by Jury; the habeas corpus Act; and every other privilege essential to the protection of life and property. It should be further recollected, that we thus possess the laws and protection of the British Government without its expenses; so that it is true, as Sir Francis Head has asserted, that though we may not have the exact image and transcript of the British Constitution, the only point of essential difference is as it respects its expensive arrangement and machinery.

The first act of the Provincial Legislature, which in its constitution resembles the Imperial Parliament, & is a sort of *imperium in imperio*, was to adopt all the English laws, except the Poor and Bankrupt laws; the former happily being unnecessary in a country where honest industry will generally suffice to secure a competency of wealth and comfort. The Court of Chancery, and other important institutions of England, we can have whenever we wish to avail ourselves of them. Indeed, it was clear, that this Province possessed the advantages of the British Constitution, with many additional blessings, without any of its burthens.

He would now again pass to the question of the

responsibility of the Government. If, by that term it was meant that the Lieutenant Governor should be responsible to every individual in the Province, he would prove that he is so. (Hear, hear.) Yes, and he would prove in the most satisfactory manner that the responsibility contended for by some gentlemen is a mere shadow, a thing of nought, compared with that which really exists, according to the laws and constitution of the Province.

As long ago as in the reign of William III. it appeared that some of the Colonial Governors did not always conduct themselves with propriety, and an Act was passed which, as it was short, he would beg leave to read:

“Whereas a due punishment is not provided for several crimes and offences committed out of this His Majesty’s realm of England, whereof divers Governors, Deputy Governors, or Commanders-in-chief of plantations and colonies within his Majesty’s dominions beyond the seas, have taken advantage, and have not been deterred from oppressing His Majesty’s subjects within their respective governments and commands, nor from committing several other great crimes and offences; not deeming themselves punishable for the same here, nor accountable for such their crimes and offences to any person within their respective governments and commands: for remedy whereof, be enacted by the King’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same. That if any Governor, Lieutenant Governor, Deputy Governor, or Commanders-in-chief of any plantation or colony within His Majesty’s dominions beyond the seas, shall after the first day of August, one thousand seven hundred, be guilty of oppressing any of His Majesty’s subjects beyond the seas, within their respective governments and commands, or shall be guilty of any other crime or offence, contrary to the laws of this realm, or in force within their respective governments or commands, such oppressions, crimes, and offences shall be enquired of, heard and determined, in His Majesty’s Court of King’s Bench, here in England, or before such Commissioners, and in such county of this realm, as shall be assigned by His Majesty’s Commission, and by good and lawful men of the same county, and that such punishment shall be inflicted on such offenders, as are usually inflicted for offences of like nature committed here in England.”

Let it be remembered, that the Act he had just read was passed when the present United

States form when there colonies, si But if the pets, and r nors, why have been shows plain on the Gov ed to shelle ponsibility mains in for would gran ecuted in t as Lord Ma be impriso out a Gover of the Crow He can be like any o ry. In the prosecuted, gas, and a him for an haps above sidered exc man who h son and reb Here was address:—a the judgment “That a character th him for an his Govern of an action for an injury ly lie agains be tried in exercised the and properly violation of a reposed in hi It was no had been adv his council; use it would owever, it h himself unde consequence who had su have been w ble proof of responsibility t nominally on cuted. Neith

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States formed part of the British Empire.—
when there were Legislative bodies in those
colonies, similar to those in Upper Canada.
But if the Executive Councils had been Cab-
inets, and responsible for the acts of the Gover-
nors, why was such a law passed? It would
have been the height of absurdity. The act
shows plainly that the responsibility rests up-
on the Governor, and that he cannot be allow-
ed to shelter himself under any pretended res-
ponsibility to his Council—and *this Statute re-
mains in force at this day.* He (the Sol. Genl.)
would grant that a Governor could not be pro-
secuted in this country; and why? Because,
as Lord Mansfield says, if he could, he might
be imprisoned; and thus the colony he with-
out a Governor, and the power and authority
of the Crown be destroyed. But what of this?
He can be prosecuted in England, and tried
like any other individual by a jury of his coun-
try. In the year 1774 a Governor Mostyn was
prosecuted, by a person of the name of Fal-
rigas, and a verdict of £3000 rendered against
him for an act which would have been, per-
haps above any other strictly illegal acts, con-
sidered excusable. It was for imprisoning a
man who had been accused of stirring up trea-
son and rebellion in the colony. (Hear, hear.)
Here was proper responsibility, and proper
redress:—and Lord Mansfield in pronouncing
the judgment of the court declared,—

“That a Governor was not that sacred
character that an action would not lie against
him for an illegal act committed by him within
his Government—but that for many reasons,
if an action did not lie against any other man,
for an injury done, it should most emphatical-
ly lie against the Governor—but that he must
be tried in England to see whether he had
exercised the power delegated to him legally
and properly; or whether he had abused it in
violation of the laws of England, and the trust
reposed in him.”

It was not pretended that this gentleman
had been advised to do what he had done by
his council; and if he had set up such an ex-
cuse it would have availed him nothing. If,
however, it had been in his power to shelter
himself under the advice of his council, the
consequence would have been that the man
who had sustained a grievous injury would
have been without any remedy,—an admi-
rable proof of the advantage of taking away re-
sponsibility from a Governor and placing it
nominally on a council that cannot be prose-
cuted. Neither are we without examples of

the responsibility of Governors to individuals
for injuries done them nearer home. Hon-
orable gentlemen no doubt recollected Gover-
nor Gore; and some of them might have heard
of Judge Thorp, Mr. Surveyor-General Wyatt,
and others, who either abandoned their situa-
tions or were suspended by Mr. Gore for al-
leged misconduct. Mr. Wyatt was so dis-
posed of, but, considering himself unjustly
treated, he brought an action against Mr.
Gore when in England and during the time
he was on leave of absence as Lieutenant-
Governor of the Province, and received £300
damages against him. Many other cases
might be adduced proving the responsibility of
Governors for their acts, and showing that
they never pretended to shelter themselves un-
der the advice of their Council. Neither could
they do so; for the laws and constitution
make them, and not the Council, responsible
for whatever injury may have been commit-
ted by them. They are known, tangible in-
dividuals; but a Council could not be so pro-
secuted—and if a party were told to seek redress
from it, for an injury however enormous, he
would find that his hopes of compensation
were visionary and unfounded.

He would conclude this part of the subject
by referring to two Acts of the Imperial Par-
liament showing the heavy responsibility im-
posed on Governors of Colonies, and from
which neither an Executive Council, nor any
other power but Parliament itself, could save
them. The first is an Act passed in the 7th
and 8th years of William and Mary, for pre-
venting frauds, and regulating abuses in the
Colonial Trade—by the 4th clause of which it
is enacted that if a Governor of any of the Co-
lonies shall fail to do the utmost in his power
to carry that law into effect, he should forfeit
one thousand pounds, and be removed from
his government. The second Act was passed
in the 4th year of Geo. III. to prevent paper
bills of credit, issued in the colonies in Ameri-
ca, from being made by a legal tender by any
Act of the local Legislature; and by the 3rd
section of which it is enacted that if any Gov-
ernor shall give his assent to a bill passed by a
Colonial Assembly in opposition to the intent
and meaning of that Act, he should forfeit
£1000, be removed from his government, and
for ever rendered incapable of any public office
or place of trust. Of what avail, he would
ask, would it be to a Governor of Upper Cana-
da, who had rendered himself liable to punish-
ment under the provisions of either of these

Acts, to plead as his excuse that he had acted by and with the advice of the Executive Council—would such a plea save him from punishment, where would the responsibility rest then [Hear, hear.] He might multiply proofs and authorities, but it could not be necessary.— Those hon. gentlemen who wished to be influenced by honest argument and truth had heard enough, and if any were already determined as to their votes, without regard to facts or arguments, they must pursue their own course. It had been asserted that the doctrine laid down by His Excellency was altogether novel; but when, he would ask, had responsibility been claimed at any former period of our history by the Council, or by any body on their behalf? Where was the proof of it? ("Where is it not?" from Dr. Morrison.) The hon. and learned gentleman asks "where is it not?" He (the Solicitor General) was really surprised. Why was there no noise made about it last Session? Had not that hon. gentleman himself, and those with whom he acted, declared that the Council was a perfectly irresponsible and useless body? Perhaps the hon. gentleman had forgotten this, but his memory should be presently refreshed. When the Act was passed, making a permanent provision of £500 annually for the support of the Council, it was asked often during the debate, and particularly by the hon. member from Lenox and Addington, "What is the use of such a body, responsible to no one for their conduct?" He (the Sol. Gen.) had no doubt but those arguments would be found in the speeches of hon. members as reported at that time in the public papers; but now they seem to have acquired new light. [Hear, hear.] To show that some changes of opinion had occurred, he would read an extract from the famous Grievance Report of last Session:

"It appears that it is the duty of the Lieutenant Governor to take the opinion of the Executive Council *only in such cases as he shall be required to do so by his instructions from the Imperial Government, and in such other cases as he may think fit.*"

Now, he particularly desired to call the attention of the hon. member (Dr. Morrison) to the fact, that his own name, the name of T. D. Morrison, was stuck to that Report. Yes, there he was, saying the very thing which he now declares, and almost swears, is not true. [Hear, hear, and laughter.] The hon. gentleman who fabricated that Report knew well that the Council, as well as the Governor, was

only responsible to the King, and that such was the Constitution.

He (the Solicitor General) felt an unwillingness to refer to the extraordinary conduct of the late Councillors, with all of whom, except one, he had ever been, and hoped still to continue, on terms of friendship and intimacy. It was a maxim with him never to allow political feelings to destroy private friendship; he had become perfectly callous to the attacks made upon himself by political opponents, and should never suffer them to affect him. But his public duty required him to refer to the letter which had been read in that House, and in the Legislative Council, setting forth the terms on which those gentlemen took office. It was asserted, in the Report under consideration, that that letter, as read in the two branches of the Legislature, had been altered from the original draft shown to those gentlemen by His Excellency, and that it did not contain the terms on which they accepted office. [Hear.] But, if this were true, would those gentlemen have taken office under such circumstances? If gentlemen, so distinguished for acuteness and deliberation, had seen additions of such importance made to the original draft, would they not have returned the letter to His Excellency, and have retired, saying—"No Sir, these are not the terms on which we accepted office?" Or if they did not wish to embarrass the Government by retiring, could it be supposed that they would have put the letter into your hands, Mr. Speaker, and in the hands of a friend and member of the other House, for the purpose of having it read, as it was by you, with much emphasis and apparent satisfaction, for the express purpose of showing the conditions upon which they had accepted office, if it did not truly describe those conditions? He (the Sol. Gen.) was bound to assume that the assertion made in the Report was unauthorized, because he could not for a moment suppose that the hon. Speaker of this House would have consented to read to the House, on behalf of his most intimate friends, as an authentic document, one which he must have known was not so. He felt very sensibly the embarrassing situation in which the hon. Speaker must be placed on the present occasion, and would most gladly sit down in order that a motion might be made for the House to go into Committee, and thus allow the Speaker an opportunity to express his views on this affair. Indeed, it was most unfair in the majority of the House not to go into committee; as by the

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g, and that such present course, the House was deprived of the valuable legal opinions of the hon. Speaker on so important a subject. But to him (the Sol. Gen.) it appeared perfectly clear that as the Speaker was the intimate friend of the late Councillors, and had been consulted by them at every stage of the proceedings which led to their taking office, he must have been, by direct information, or otherwise, aware of the incorrectness of that letter, if it were incorrect; and therefore, if it were so, he would not have permitted himself to be the medium of communicating it to the House. Hence, he (the Sol. Gen.) was bound to believe that that letter contained the real principles under which those gentlemen became Councillors. Now, he would ask, if they accepted office with an understanding that their advice was to be limited to those affairs on which His Excellency might feel it necessary to consult them, how could they have understood the Instructions in that unlimited sense in which they have construed them in their address to His Excellency? [Hear, hear] There was a something of mysteriousness hanging over the whole affair which he could not comprehend.

It had been stated, that after His Excellency received the address from his Council, it was wrong for him to require them to renounce their principles or retire from office. But how could His Excellency do otherwise? He replied to them in a document in which he gave his exposition of the Constitutional powers of the Council, and then he in substance said—"Your views and mine are directly at variance on a vital principle of Constitutional law—it is impossible that we can act harmoniously under such circumstances—you must therefore calmly weigh the views which I have laid before you, and if you cannot conscientiously accede to them, I cannot conscientiously give them up, and therefore we must part on good terms." Had His Excellency done otherwise, he would have been justly condemned.

It had been stated by the hon. member for Lenox and Addington that the Executive Council were willing to withdraw the paper they had addressed to His Excellency when they discovered the difficulties it was likely to lead to; and that it was proposed to erase it from the Council books, and that the Clerks of the Executive Council had been sworn to secrecy on the subject. All that he could say was, that if this statement was true, it involved very serious charges against these gentlemen—in the first place, he knew of no author-

ity under which the Councillors could administer such an oath to the Clerks, and if no such authority existed, then the oath administered was an illegal, and a profane oath; and in the second instance, the proposal to erase from the records of the Council the document they had so deliberately signed, if made as asserted by the hon. member, (which he was bound to discredit) was most reprehensible: and he must say that if such a proposal was made to His Excellency, and he had not forthwith dismissed those who made it from office, he would not have performed his duty; unless indeed they had been convinced of their error of judgment, and on that account wished to retract their opinions.

To continue them as Councillors, they retaining the opinions they had expressed in opposition to the Governor would have been objectionable indeed. Suppose, by way of illustration, that two or three Clergymen should write an elaborate document to their Bishop, declaring their disbelief of the great truths of Christianity, and stating their reasons, thereby to convert him to their views, and that the Bishop should reply at length to their objections, and inform them if they persisted in their opinions, they must be suspended, as he could not labor in connexion with persons holding such sentiments;—suppose that when they see they are in consequence likely to lose their livings and be expelled the church, they should request permission to recall their declaration, at the same time retaining their opinions. What would be the duty of their Bishop? Evidently to say "No, gentlemen, it will not be sufficient that you withdraw the testimony of your guilt, you must retract your opinions, you must declare that they were wrong, and that you no longer retain them, before I can consent to continue you in your sacred office." Now, the affair with the Council was precisely similar. If the gentlemen were not convinced by the able, plain and kind reply of His Excellency, they were bound in honor to retire, even if not requested to do so. He had too high an opinion of the honorable feelings of those gentlemen to believe that they had proposed to withdraw their paper and continue in office, retaining the opinions they had avowed, and he was astonished that such an assertion should be made. If true, nothing, in his opinion, could more fully prove their unfitness for the confidential and honorable situation of Executive Councillors than that they were capable of making such a pro-

posal.

A great deal had been said about His Excellency having garbled the documents sent to the Council. It appeared that, through a clerical error, the word "these" had been omitted, and on this ground his Excellency is charged with a laxity of moral principle. To say nothing of the unjustifiable grossness of this charge, it was really astonishing that hon. gentlemen could not discover, that, if his Excellency had designed to garble his extracts, it would have been as easy a matter for him to have done so the second time as the first, and thus not have exposed himself. Such accusations were no credit to those who made them. Such charges might, with much stronger semblance of truth, be brought against the authors of the Report under discussion. A most labored effort had been put forth by the Committee to impeach the character of His Excellency in reference to the arrangements which had been made between two of the Councillors, concerning the administration of the government in case of the death of his Excellency. As it respected the arrangement itself, it was altogether unnecessary. It appeared to have been made under the impression that the senior councillor must otherwise become the administrator of the Government in the case supposed. But that was a mistake. When Mr. Smith was sworn into office there were two older councillors than himself, Mr. Baby and Chief Justice Powell; neither of whom was forbidden by the Constitution to administer the Government. But no man is obliged to assume the office. He would now state the facts of this case, and leave every honest mind to judge whether there was any foundation for the abuse which had been heaped upon his Excellency. One of the Councillors, *before they were sworn into office*, (let that be remembered), suggested, that in case of His Excellency's death, the administration of the government should devolve on the hon. Mr. Allan. To this Mr. Sullivan readily assented, being anxious to be free from so great responsibility. And to place his wish beyond doubt, it was suggested by Mr. Sullivan that a writing should be drawn and signed by him, declaring that, in the event of the Government devolving on a Councillor, he would resign and make way for Mr. Allan. This conversation took place in presence of His Excellency, who was requested to draw an instrument to that effect. He did so, and it was signed by Mr. Sullivan; and Mr. Allan received it, and there the mat-

ter rested. It was no official document,—it was not done in Council, nor was any record made of it. It was a *private arrangement* between two gentlemen, with respect to which the Lieutenant Governor was perfectly indifferent. [Hear, hear!] Now, what does the Report state? It states that when His Excellency was addressed by the House for information, he intimated—(mark the expression)—he "intimated that he knew of no such agreement, and that in fact no document of such a nature *existed*." Now this was plainly a misrepresentation. His Excellency *intimated* no such thing; and, to prove this, it will be most satisfactory to read the answer his Excellency did give to the Address of the House for information on the subject. It is as follows:—

"GENTLEMEN—I herewith transmit as much of the information desired by the House as I possess.

"I have entered into no bond or agreement of any sort, with my present Executive Council, and I do not possess, nor does there exist in Council, any document of such a nature, between two or more of the said Council."

This answer was in the possession of the committee at the time they made the unfounded assertion contained in their Report. Any man of ingenuous disposition—any man who was not desirous of perverting the truth, would have at once seen that His Excellency, merely wished to inform the House, that *officially* he had no control over any document such as was referred to, but that he by no means intended to convey the idea, that "no document of such a nature existed;" on the contrary, he very plainly intimated the reverse, and to prove that he had no objection to its being made public and that he was ready to assist in its disclosure, he permitted Mr. Sullivan to appear before the committee and state everything he knew respecting the matter.—Had his Excellency desired a concealment he could have prevented this: and the committee would then have been left without this new topic, upon which to assail the Lieutenant Governor. But, as an honest man, he had no desire to conceal truth—all he asked was, that the truth should be plainly told, and no false interpretations placed upon it. Much stress was laid upon Mr. Sullivan having expressed an unwillingness, at first, to state who drew up the document. But why was he unwilling? Undoubtedly, because he suspected the dishonorable use that would be made by the committee of that information. [Hear,

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hear.] But it would be a mere waste of time for him to attempt further to show how utterly impossible it was for any imputations to be fairly cast upon the character of His Excellency with regard to that transaction. What he had said had not been for the sake of convincing the Committee, or those who were already determined to sustain the report, and all the slanders contained in it—but to show to the country the real nature of a transaction which had been so shamefully misrepresented for party purposes. [Hear.]

He had detain^d the house a long time, but he hoped that the vast importance of the subject would form for him a sufficient apology. He had felt a deep and thrilling interest in the question before the house, and although he had no doubt as to the course which the majority would pursue, and that it would be of no avail for him to argue against the decision which had been already determined on, yet that regard which every patriotic man must feel for the prosperity of the country in which the interests of himself and his posterity are at stake, rendered it impossible that he should say less than he had. The subject was an exciting one, but he had endeavored to confine himself to a deliberate consideration, and calm discussion of its true principles and merits, and of those prominent features of the Report which, from their connexion with the main question, seemed to possess some importance. He hoped that he had accomplished what he proposed at the commencement of his observations. He had noticed the origin of the Executive Councils—he had pointed out their legitimate functions, and how far their existence was identified with the Constitution. He had shewn the real responsibility of Colonial Government; and had made it obvious that the system advocated by the late Council; and in the Report, if indeed it might be called a system, would completely remove that responsibility from where alone it could safely rest, and would introduce in its stead, a mere ideal responsibility, subverting the best interests of the country, and annihilating in it every vestige of British rule. (Hear, hear.) and now he would close his remarks by expressing his deep regret that men should be found occupying the important and distinguished places of representatives of a patriotic people, who could abuse the trust committed to them, and avail themselves of their parliamentary privileges to traduce the character, and misrepresent the conduct, of an honest, up-

right, disinterested, straightforward, able, and truly patriotic a man as ever was entrusted by Britain's Monarch with the government of any Colony of the Empire.—(Hear, hear.)—a man whose only study was to maintain alike inviolate the prerogatives of his Sovereign, and the indefeasible rights of the people, (hear, hear;) whose most ardent desire was, to carry out in all their extent the benevolent designs of one of the most indulgent and patriotic Kings that ever wore the British Crown, [hear, hear;] and who still would persevere in accomplishing the important work entrusted to him, amidst all the obstacles which might be thrown in his way. [Hear, hear.] Yes, such was the individual against whom all the vituperative language of that labored Report was directed;—such was the individual who, it might be almost said, *immediately* on his arrival, is accused of crimes and offences which, if true, ought not only to depose him from his exalted office, but ought for ever to close against him the door of civilized society. [Hear, hear.] He would not give that man credit for much strength of understanding, or honesty of principle, or goodness of heart, who would not decide that there was some other object kept in view, by the framers and advocates of that Report, than the investigation of constitutional principles. It spoke not the calm and dignified language of virtuous patriotism, but that of an unworthy and factious attempt to embarrass the administrator of the Government. That would be traced by every candid man in almost every paragraph, and it would produce in the country a very different effect from that which the supporters of it appeared to anticipate. [Hear, hear.] He supposed that hon. members were resolved, however, to try the experiment. Well, let them do so. They had of course power to stop the supplies necessary on carry on the Govern't in an advantageous manner; but there was another power from which theirs was derived; and it was for the people to decide whether it was for the peace, welfare, and good government of the Province that the Courts of Justice should be impeded in their important proceedings,—that the public offices should be shut up, and that the industrious farmer and mechanic should suffer from the suspension of all internal improvement. Yet such every hon. member knew must be the inevitable result of stopping the supplies.

But this, notwithstanding all the evils that would result from it, would undoubtedly be

done; and then efforts would be made to persuade the country that it was done from a regard for their rights and interests. (Hear, hear.) But the people would not believe it; there was too much intelligence in the country for such a deception to be practised upon its inhabitants. There was no Colony that possessed the power and the advantages which had been entrusted and granted to Upper Canada, for the benefit of those patriotic men who were among its first inhabitants, and who risked their lives, and sacrificed their property, in defence of British principles; yes, many of them had fought and bled for the sake of the privileges which they then enjoyed under merely chartered governments. But the British Government, with that nobleness by which it has ever been distinguished, generously decreed a reward to their loyalty by increasing and greatly extending the privileges they had previously enjoyed, and conferred upon this Province that constitution which it was the object of the Report under consideration to subvert and destroy under the false pretence of supporting it. (Hear, hear.) Yes, the object could not be concealed, and the country will pronounce an equitable sentence on its authors and abettors. The powers entrusted to the Colonial Legislature were never intended to be exercised in the manner now contemplated. It never was supposed that an effort would be made to withhold the necessary supplies for carrying on the Government, because of a difference of opinion having arisen between the Governor and the majority of the House on a constitutional question;—and on a question which the Imperial Government alone could decide. What was the meaning of such a step? It was saying most distinctly, not to the Governor, for he had not power to grant what was demanded of him, but to the King, “Unless this question be decided according to our dictation we will refuse to co-operate with the Government, we will array ourselves against the constitutional powers of the King’s representative, or in other words, against the King himself.” (Hear, hear.) Such was the language spoken by the measure, and although it might be denied, it could not be disproved. A certain system is laid down by our Reformers in the Assembly, and it is designated *responsible government*;—it is asserted that it is the system acknowledged by the Constitution, and the Governor is required to act upon it. He dissents, and states that he cannot view the Constitution in that light, and therefore cannot, in accordance with his oath, adminis-

ter the government on such principles; but he points to the imperial government as the only tribunal competent to award a decision, and to that decision he declares himself willing respectfully to bow. Why then does not the House wait for that decision? If hon. members were willing to abide by it, and to uphold the Constitution as it exists, why stop the Supplies? Such a step is evidently an attempt to intimidate the Government, and it loudly declares to the King, you must either decide that our construction of the constitution is right, or you must make such changes as will accord with the system we have demanded; and if you will not, we will not be governed by you. (Hear, hear.) Suppose the Government should decide that that system cannot be established without destroying all colonial dependency, what then must be done? The answer was obvious:—but there were more than 150,000 men, loyal and true, within this Province, who would never consent to have the authority of the Sovereign trampled under foot; and never, without their concurrence, could the moral power of the Government be put down. (Hear, hear.) If the refusing to vote the Supplies would not open the eyes of the people, they would deserve to be slaves; not the slaves of the British Monarch, for such a relation could not exist within the boundaries of his Empire,—[hear, hear.]—but the slaves of the present majority of the House of Assembly, whose eager grasping after uncontrolled power sufficiently proved how utterly disqualified they were for possessing it. [Hear, hear.] He was but an humble individual, and stood in a minority in that House; but, of that minority he was proud on the present occasion,—and he felt assured that the cause he and his estimable friends were now advocating would be found to be the cause of the people, and that he was expressing the views of those who constituted the worth, and the intelligence, and the patriotism of the country. Whatever might be the result of that evening’s discussion, and he had no expectation but that the Report would be adopted, it would afford him unmixed satisfaction to the latest period of his life, that he, and his respected friends around him, had lifted up their voices, and recorded their votes against a measure so fraught with most disastrous consequences to the Province, and so directly at variance with every principle which ought to find a lodgment in a British heart. [The hon. and learned gentleman resumed his seat amidst loud cheers from the crowded galleries, and the space below the bar.

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